IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No.....

THE CITY OF ST. LOUIS, a Municipal Corporation, ANNE M. EVANS, HENRY ERNST and SARAH ERNST,

*Petitioners,*

against

CHARLOTTE CLARK LINDSAY,

*Respondent.*

# BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

## Opinions and Judgments of Courts Below.

The amended judgment of the Circuit Court was filed Dec. 27, 1937 (R., p. 6). On April 1, 1938 (p. 7), ten days were granted to file an appeal bond in the penal sum of $1,200.00, cash, said bond to act as a supersideas on the personal judgment against defendant Evans. Rather than post a $12,000.00 cash bond, possession of the property was given to plaintiff's attorney. The appeal was duly allowed. On May 16, 1938, a certified transcript of the judgment was filed in the Supreme Court of Missouri. The Opinion and Mandate of the Supreme Court is dated Feb. 21, 1940. On March 2, 1940, motions were filed by the City of St. Louis, "To Modify The Judgment", and by defendants Evans and Ernsts, "To Transfer To Court En Banc" and "To Grant a Re-hearing". All three motions were overruled May 4, 1940 (R., p. 60, l. 1). An extension of thirty days from Aug. 1, 1940, was granted by Mr. Justice Black for filing this application.

## Was There an Adequate Non-Federal Ground for the Decision of the Supreme Court of Missouri?

It is believed that the non-federal ground of inadequacy of consideration was not sustained by the facts as found in the Opinion of the Missouri Supreme Court, under Mo. law.

## "Inadequacy of Price Paid", Is Not an Adequate Non-Federal Ground.

The Opinion found (R., p. 50, l. 42) that the price paid covered

> "the judgment, interest and costs"

and (R., p. 52, l. 32) that this was the average price paid at such sales, but ruled:

> "This the average price, does not establish any relation between the price and the worth of any given property. A material factor * * * the worth of the property * * * on the issue of inadequacy of price is lacking."

It may be pointed out here, that an execution sale of a piece of property for the satisfaction of a tax judgment which commands the sale for the "payment of the judgment lien", interest and costs, does not take into consideration the "worth" of the property, but "the Order of Court". The execution sale is the enforcement of the judgment.

The sale of property by an executor under the authority of the Probate Court must consider the "worth" of the property, in determining the consideration.

This explains wherein the Missouri Supreme Court is in error in their next finding (R., p. 51, l. 25):

> "There is no such affinity between the amount of the tax judgment, interest and costs and the worth of the property subject thereto, upon execution, as

> to necessarily constitute the one a criterion for the other."

When the property sells for a tax judgment there are generally many different equities involved. The condition of the property, the possibility of sale at the time, of usefulness, the ratio of the tax to the income, the possibility of law suit involving title, are all factors involving its worth, but probably do not enter into the price required in satisfying the tax judgment.

The sheriff's deed (R., p. 44) sets out that the sale complied with the judgment.

## Court Findings as to "Worth" Conflicting.

The Court found (R., p. 3, last line) that the property rented for $25.00 a month. To the average person dealing in real estate, this means something very definite as to the "worth" of the property. "This property was worth $5,000.00" (p. 2, l. 31); "from four to five thousand dollars" (R., p. 50, l. 30) "and sold for less than two per-cent of its value." The price paid the sheriff is only a part of the price paid for the property.

Income tax experts add the price of the title to the price paid, as well as back taxes. Even though this Court reverses the Supreme Court of Missouri, it will not be known what price the purchaser paid for the property until a final accounting is made.

In appellant's Motion for Rehearing, your petitioners object in these words (R., p. 58, l. 12):

> "The opinion in its essence is an opinion that inadequacy of price alone is ground for setting aside the deed. This is true for the reason that, absent the prejudicial testimony of appellants' subsequent actions, consideration of which is hereby complained of, inadequacy of price stands alone as justification for setting aside the deed.
>
> Controlling decisions of this Court hold that in-

adequacy of price must be accompanied by other competent and relevant considerations to justify the setting aside of a deed."

There has never been another case in the history of Missouri Law, where the judgment and sale were regular, and the validity of the judgment was not before the Court, that a sheriff's deed based on an execution sale of a tax judgment was set aside for inadequacy of price, when the price paid, covered taxes, interest and costs.

In the *Miller* case, 82 S. W. (2nd) 579, 271 U. S. S. Ct. 1935 (p. 41), neither the tax judgment nor the tax deed was set aside. The Court set aside, during the return term of the execution, the tax sales, after the tax deeds had been recorded. The $5.25 surplusage in the sheriff's office has not been disposed of by the Court. The City of St. Louis was not required to return the money accepted for the tax deeds, nor has the $280.00 deposited in Court for the use of the purchaser been accepted by the purchaser for the sheriff's deeds. In the *Miller* case, the judgment and sale were regular. The sale was set aside for inadequacy of price which shocked the chancellor, though at the time, he was presiding over "A Court of Law".

In the *Marrs* v. *Wessel* case, 237 Mo. 597:

"Setting aside on motion * * * its *judgment.*"

## "Subsequent Acts of Defendant" Is Not an Adequate Non-Federal Ground.

Since INADEQUACY OF PRICE alone has never been considered an adequate reason for setting aside sheriff's deeds based on tax judgments, the Circuit Court evidently sought to find some other justification. Over defendants' repeated objections testimony was taken as to what was done with the property subsequent to the sale.

If the judgment and sale were void because of lack of due notice, defendants subsequent acts could not have put

life into that which was already dead, so these subsequent acts could not have been fraudulent. The tax judgment was nearly ten years old, so could not have been "voidable". If plaintiff had received notice as required by the state and federal constitution, subsequent acts could have no bearing on plaintiff's right in the property.

The Circuit Court was affirmed in its finding:

> "The Court doth further order, adjudge and decree that plaintiff's property was sold without due process of law by the Sheriff * * *"

and yet was directed to omit this issue, in giving the relief prayed.

From the point of view of the Circuit Judge, if the sale was not "void" as adjudged, then all subsequent actions of defendants might not be indicative of fraud against plaintiff's right to the property. The sale was regular. No fraud had even been alleged therewith.

If the sale was to be *set aside* because of the subsequent acts of defendants, then the problem arises as to who was entitled to the rents, until these acts occurred. Plaintiff had released to defendant the possession, and rents had been collected following the title.

The Supreme Court of Missouri has settled this question in advance, by affirming the lower court in "all things, with full force and effect" and then contradicted itself.

It is evident that the mandate is so contradictory on its face, that the Circuit Court cannot comply with all parts of it. It is elementary, that the Circuit Court judgment cannot be in all things affirmed and stand in full force and effect, and yet be modified.

## The Court Erred in Its Legal Interpretation of the Acts of the Defendant.

The Circuit Court Opinion (R., p. 3, l. 9) says that respondent paid delinquent taxes for 1932-33-34 on the property six days after the sale to the amount of $181.73. The Supreme Court Opinion states (R., p. 53, l. 25): "She permitted Mrs. * * * to collect rents" for five months or $125.00. "This was not in the usual and ordinary course of business." In as much as Mrs. Lindsay could not have collected from the City of St. Louis for these delinquent taxes paid after the sale, it might have been that the owner of the sheriff's deed was willing at the time to let the one amount apply on the other, and that the purpose was not as stated in the opinion, "To destroy respondent's right to relief by timely motion". Before reselling the property, plaintiff did not rely on her own opinion regarding the title, but purchased a title from the Mechin and Voyce Title Company, showing the property was free and clear of all liens, in her name. Because of the decision in the *Miller* case (supra) it was necessary to wait until the end of the return term of the execution, which was several months.

The acts complained of in the petition and set out in the Opinion are admittedly *after* the sale, and could not be an adequate non-federal reason for setting the sale aside.

The Supreme Court found (R., p. 53, l. 17): "Miss Evans delayed in asserting ownership for the purpose of depriving respondent of her remedy at law by motion." The Southwest Reporter said in its topical sentence, that she did not record her deed, 139 S. W. (2nd), No. 4, p. 906, until the end of the return term of the execution, but the finding of fact shows:

> "* * * said Sheriff executed a deed in open Court * * * on Sept. 30, 1935, and delivered same * * *" and "The sheriff's deed was recorded Oct. 5, 1935" (R., p. 48, l. 33).

Respondent therefore had notice within five days that her property had been sold, as far as defendant's actions were concerned in recording the deed.

The acts of defendants could not be an adequate non-federal reason for setting the sale aside, and there was timely objection in the assignments of error and in the motions to transfer to court in banc, and to grant a rehearing.

## The Sale Must Have Been Set Aside Because Plaintiff Claimed She Had No Actual Knowledge, in Spite of the Legality of the Notices Given.

Having disposed of the two non-federal reasons given by the Supreme Court for setting the sale and deeds aside, we may consider the decree (R., p. 49, l. 8): "Respondent did not have actual knowledge."

The Opinion seems to infer a duty on the part of the purchaser at the execution sale to see that Respondent had actual knowledge of the sale. The Courts have long recognized that in some instances, if small amounts of taxes are to be collected for city benefits, that "Notice by Publication" is essential. When the City was unable to see that she had actual knowledge, it would be a difficult matter to require this of a purchaser. The Opinion found that defendant Evans knew that Respondent had no actual knowledge. This was a conclusion unsupported by any evidence that defendant had met Respondent before the filing of the suit which was five months after the sale. The records showed a deed of trust outstanding against the property for $2,500.00 (R., p. 48, l. 10), which might be interpreted as meaning that the title owner had no equity left in the property, and had no interest in paying the tax even if she had actual knowledge of the tax sale.

Appellants' Motion to Transfer to Court en Banc brought the federal question involving the rights of your petitioners squarely before the Missouri Supreme Court for reconsideration (R., p. 59).

> "The constitutionality of this entire special benefit proceeding has been raised by the respondent at each step of our case in this wise:"
>
> "The Court * * * has seen to treat them as MOOT."

Objection was also raised in Motion for Rehearing.

The Motion of the City of St. Louis to Modify quotes from the Opinion:

> "While appellants contend there was due process so as to subject the lot to the special assessment benefit, the record establishes that respondent did not have actual knowledge of the proceedings"

and say that said opinion should be modified

> "for the reason that * * * opinion may be misconstrued as holding that regardless of the method of notice as required by Article XXI of the Charter with regard to condemnation proceedings, and the statutory notice with respect to execution sales, that parties in the benefit district in condemnation are required to have ACTUAL KNOWLEDGE of said proceedings, in addition to the prescribed notice."
>
> "The opinion as handed down will have a very serious effect, * * * causing appellant to become the owner of thousands of parcels of property on which it will be unable to collect taxes. Moreover, if the opinion is susceptible to the construction we apprehend it would make no difference whether or not the sale price is adequate."

We submit that your petitioners are entitled to have the Court pass upon the question as to whether or not such notice as was given in the condemnation proceeding and the execution sale, constituted "due process of law" as provided under Sec. 1 of the Fourteenth Amendment of the Constitution of the United States, and Section 30, Article II of the Constitution of the State of Missouri. PUBLIC INTEREST WILL BE PROMOTED BY A

PROMPT SETTLEMENT IN THIS COURT OF THE QUESTIONS INVOLVED.

## Cases Discussed by the Supreme Court of Missouri in Supporting Their Opinion in the Case at Bar.

The general rule in Missouri is that inadequacy of price alone is not sufficient to set aside a sale. It must be coupled with some irregularity at the sale. Judge Black expressed the rule in *Wagner* v. *Phillips,* 51 Mo. 117, which has been followed for many years:

> "Where there is gross inadequacy of price, the proceeding of the sheriff on the execution ought to be free from irregularities."

In the *Lindsay* case the Court has sought these irregularities in the sale, but failing to find them, has used irrelevant matter occurring after the sale which was included over defendants' objections through an abuse of process, and which show on the face of the record that they occurred long after the judgment and sale.

The Court's Opinion on page 51, line 34, states "the rule with its modifications", and quotes *Guinan* v. *Donnell* (Banc), 201 Mo. 173, 202, as a sustaining authority, also cited in *Mangold* v. *Bacon,* 237 Mo. l. c. 522. Contradicting this, Judge Greaves speaks directly: "Conduct alone was sufficient to avoid the deed." Fraud was shown in connection with the sale itself.

The Court's Opinion, page 52, line 14, says: "Consult Hannibal & St. Joe Rd. Co. v. Brown, 43 Mo. 294, 297." This is another of the cases discussed by Judge Greaves in the *Mangold* case, 237 Mo. 542, which Judge Greaves points out was erroneously relied upon by Judge McFarlane in the *Mangold* case. It does not sustain setting aside a sale for inadequacy of consideration. The valuation of the property was $114,800 and it sold for $35.00. While the judgment was being reversed in the Supreme Court, the execution sale took place. "When the judgment was re-

versed (43 Mo. 297) all the proceedings * * * were vacated."

In the *Mangold* case, an effort had been made to comply with the tax law. The tax was paid, and it was through mistake that the costs of suit were not paid, but in the case at bar it was more than ten years after the tax judgment that plaintiff tendered into court the amount of the benefit assessment. She had lived in this house and must have known of the improvement to the street and enjoyed its benefits, and could have secured actual knowledge of the benefit had she made the effort. The judgment, page 3, line 12, shows that she was behind three years in her general taxes. The price paid for the sheriff's deed in the *Mangold* case did not cover taxes, interest and costs, while it did in the case at bar.

## Judge Greaves Dissents.

Judge Greaves briefed all the cases cited in the *Mangold* case and showed that they did not uphold the opinion regarding inadequacy, but were in many cases of the opposite opinion, he dissented with these words, 237 Mo. 542:

> "THERE HAS BEEN NO OPINION OF THIS COURT THAT WILL BE FOLLOWED BY MORE DISASTROUS RESULTS * * * LAND TITLES ARE MADE DEPENDENT UPON THE SLIDING STATE OF SHOCK TO THE CHANCELLOR'S CONSCIENCE."

> "TO HOLD TAX SALES, MADE OPENLY AND FAIRLY, BAD FOR MERE INADEQUACY OF PRICE PAID, IS TO ABSOLUTELY DESTROY OUR METHOD OF COLLECTING TAXES."

Other cases cited by Judge Bohling do not sustain the contention, page 52, line 10. *State ex rel.* v. *Elliott,* 114 Mo. App. 562, 566. The $12.50 paid for property worth $4,000.00 did not pay the tax and costs. In *Mitchell* v. *Jones,* 50 Mo. 438, the Court says: "The judgment of partition must be

reversed." In *Davis* v. *McCann,* 143 Mo. 172, 177, the Court says: "The execution issued by the clerk of his own volition" where the statute provides (Sec. 4895, R. S. Mo. 1889): "The party in whose favor any judgment * * * is rendered, may have an execution * * *." In *Siela* v. *Kneib* (Mo.), 176 S. W. 1052, there was a fiduciary relation between the parties which was violated. The Court said: "The relation of these parties to each other is an all important element in the transaction." In *State ex rel.* v. *Nathan* the sale was advanced. The prosecuting attorney bought it.

## The Uhrig Case.

In the recent case of *Uhrig* v. *Hill-Behan Lumber Company,* 314 Mo. 851, upon which your petitioners rely, the Court, in denying the plaintiff the relief prayed for, states as follows, starting on page 417:

> "Plaintiffs' contention is thus stated in their brief: 'Inadequacy of price, coupled with fraud or unfairness such as to shock the conscience of the Court, will justify the Court in setting aside a deed obtained by parties using such means.'
>
> "Plaintiffs' argument is that, considering the low price, 'coupled with the general manner in which the appellants conducted themselves, it is inevitable that the conscience of the Court should be shocked, and * * * it appears that the respondents had offered to do equity and that * * * appellants can in no way be injured by a decree which provides that they shall have everything which is coming to them, including attorney's fees.'
>
> "The 'general manner in which appellants conducted themselves', constituting 'unfairness or fraud', upon which plaintiffs rely, evidently is based on the matters stated in the specific findings of the Court's decree, to wit:
>
> "'That thereafter (after judgment) the defend-

ants made no demand *upon the plaintiffs for the payment of said judgment,* but sat by and permitted the plaintiffs to improve said property to the extent of more than $2,000.00, * * * that the plaintiffs were at all times (after they learned of the same) ready, willing and able to pay the defendants such sums as might be necessary to satisfy the defendants' claim * * * that the defendants, through their agent, informed the plaintiffs that the sum of $1,565.33 would make the defendants whole in connection with all moneys due, both as to their judgment and interest thereon, and as to all expenses in connection with the collection of the same, and that the plaintiffs thereupon offered to the defendants such sum of money, which was refused by the defendants * * * and that the defendants in refusing to accept the tender made by the plaintiffs * * * have acted in such a manner as, coupled with the great inadequacy of price for which the defendants bought the property, to shock the conscience of the Court.'

"The Court did not declare the sale void or set aside the deed, *and* there is no evidence in the record upon which it could have done so. All proceedings in the mechanic's lien case were regular and there is no evidence whatever that defendants, or any of them, knew prior to the sale that plaintiffs were the owners of the note, *or did, or could have done, anything to prevent plaintiffs from learning about the sale. There was no evidence of unfairness or suppression of bidding at the sale.* * * * If plaintiffs did make any improvements after the sheriff's sale, they also collected rentals, and there is no showing as to which was greater. *However, if defendants got good title by the sheriff's sale, they were under no obligation to sell the property back to plaintiffs.* FAILURE TO DEMAND FROM PLAINTIFFS, AFTER SALE, THE AMOUNT IT

> COST THEM, OR TO ACCEPT PLAINTIFF'S TENDER OF ANY AMOUNT IS, THEREFORE, WHOLLY IMMATERIAL. *Neither could be the basis for setting aside a valid conveyance under the sheriff's sale, which the Court recognized by not doing so, nor for compelling defendants to give up a valid title. In other words,* IF THE SALE WAS VALID, DEFENDANTS OWN THE PROPERTY AND CANNOT LOSE THEIR RIGHT TO KEEP IT BY MERELY REFUSING TO SELL IT BACK TO PLAINTIFFS."

### *Rogers v. Dent.*

In *Rogers* v. *Dent,* 292 Mo. 576, it shows how far the Missouri Courts will go in sustaining notice by publication. Too far, I think in this case. The woman had paid her tax but was not given credit for it. Notice by publication was given in the tax suit and property sold. Notice by publication was given in an equity suit to quiet title and judgment rendered. The court said: "If tax had been previously paid, that was a matter of defense in the back tax suit." Defendants owned about 25,000 acres of land that surrounded her land. This case cites *Shemwell* v. *Betts,* 264 Mo. 268.

> "The judgment is unassailable by a bill in equity except for fraud in the very procurement of the judgment itself."

When the taxes had been paid twice, once by the woman and once by the sheriff's deed, and the woman had no actual knowledge of the court proceedings, it appears that the tax judgment might have been fraudulent.

### *Marrs* v. *Wessel.*

In *Marrs* v. *Wessel,* 237 Mo. 593, the Court "set aside the tax judgment" on motion during the return term of the execution. It has been quoted both in the *Miller* case and in this case, and sustains neither one, for in these cases jurisdiction to set aside the tax judgment was at an end, and the Court set aside the sales without setting aside the judgments, when in both cases both the sales and the judgments were admitted to be regular. In the *Marrs* v. *Wessel* case, they quote an opinion of Judge Black in *Mellier* v. *Bartlett,* 89 Mo. l. c. 137:

> "Every court has the exclusive control of its process, and no other court has the right to interfere with or control it."

The application of this principle to enable the court ordering the execution to nullify the judgment of another court, which it would have no right to nullify in a direct proceeding, would seem to be error, in the face of the fact that the judgment and sale were regular.

### *City of St. Louis* v. *Miller,* 336 Mo. 1122; *Supreme Court of U. S. #271, June, 1935.*

Although the cases cited according to Judge Greaves did not sustain the opinion in the *Mangold* case in setting aside a deed for "inadequacy of consideration", the Court went further in 1935 in the *Miller* case (supra), and set aside tax execution sales "on motion" in a law court, for "inadequacy of price" after deeds had been recorded, though the price paid covered tax interest and costs which it did not do in the *Mangold* case.

The property consisted of a row of five one-story brick stores. The property in the name of John Dean (Supreme Court, #271, p. 82) was subject to a first deed of trust for $36,000.00 and a second deed of trust for $11,000.00. The sheriff sold the property for tax Sept. 16, 1932. The larger creditor thereafter foreclosed his deed of trust Oct.

11, 1932, and thereafter filed a motion during the term of Court when the sale had been acknowledged and the deeds delivered. The price paid for the sheriff's deed covered taxes, interest and costs, was $285.00. The $5.25 surplusage in the sheriff's office has not been disposed of by the Court, nor has the $280.00 deposited in Court for the use of the purchaser, been accepted for the sheriff's deeds. The property is in possession of the largest creditor. All the smaller creditors have lost their money.

There are a number of items here to shock the moral sense of a chancellor. This Chancellor's moral sense was shocked at the price paid at the tax sale, not at the $47,000.00 deeds of trust on a row of one-story buildings. As Judge Greaves calls it, we have "a sliding state of shock", which might raise several questions:

> Is it legally correct for an Execution Court (a Court of Law) to set a sale aside which took place under Order of Court the preceding term, after permitting deeds to be delivered?
>
> Is it legally correct for the Execution Court to choose which one of several creditors might redeem after the deeds have been recorded, when the statutes permit no redemption?
>
> Is it legally correct for a judge at a subsequent term, ON MOTION to set aside sales whose recorded deeds (U. S. Sp. Ct., 271, p. 85) show that the sale took place, and therefore that the title vested the preceding term?

These acts of the Court may not be legally correct. The orders setting aside the sales may indeed be void, and the purchaser at the tax sale may be entitled to the property, but can only be corrected by the supervisory power of the Supreme Court of the United States.

The Missouri Supreme Court pointed out (R., p. 53, l. 10):

> "(Appellant Evans was an interested party in St. Louis v. Miller, supra)" and further down, "She

testified that on account of her experience in the Miller case she *purposely* waited until the end of the September Term, 1935 of Court before actually making known her ownership * * *"

From this the Judge seems to infer that ownership began with the date of the recorded deed, but according to the *Miller* case, ownership during the return term of the execution seemed to be dependent upon that sliding rule of shock discussed by Judge Greaves in the *Mangold* case.

The sales and judgments were regular, and the price paid covered tax, interest and costs. Many possible precedents suggest themselves in following the decision in the *Miller* case which would not be desirable. Much litigation in the state courts has resulted.

### *Ellis* v. *Powell*, 117 S. W. (2nd) 225, 226 (2).

Following the *Miller* case (supra) Judge Gantt in 1938 ruled on the *Ellis* case, but said, "The consideration of $8.50 paid no taxes"; so grossly inadequate as to amount to a fraud at law.

Our state law, Sec. 6230, R. S. Mo. 1929, applies to all cities of one hundred thousand population or more, including municipal corporations which fall under cities of the first class as required by the Constitution for purposes of classification. It sets out what the claimant must prove in order to defeat a tax title. He must have technically complied with the tax laws before the deed is recorded. Applying this as a yard stick we find in the *Ellis* case, there is no showing that the owner had technically complied with the tax law. He is allowed to have his property back by order of court.

It was apparent on the record when the sale was acknowledged in open court, that the consideration was not adequate to comply with the tax judgment. Did the sheriff and the judge owe no duty to the citizens of the state, to see that the tax judgment was complied with, before

permitting the sheriff to deliver a deed? And when the deed was delivered was there not a contract entered into between an officer of the court and the purchaser, UNDER AUTHORITY OF THE COURT, which upon recording the tax deed, was accepted by the purchaser? Should a court be permitted to change its mind any time during the next few months (during the execution term) or should it be estopped from so doing because of its act in permitting the acknowledgment to be taken? Should our concept of parties to a contract be different for courts than for citizens? "All proceedings leading to the sale of the lot were regular." Here again the Court says, "Did not have actual notice." If the court had no jurisdiction to set aside the tax judgment at the time the petition was filed, what jurisdiction could be acquired over the tax deed subsequently, when all the proceedings leading to the sale were regular? Should the citizens of a state be burdened with the expense of court procedure to collect taxes, and after the tax deed paid the tax, by order of Court the man who failed to pay his tax is still allowed to keep his property? Such decisions are a violation of due process, and equal protection of the law.

Such error, as seems to be creeping into Missouri decisions should be corrected by the supervisory powers of the Supreme Court of the United States.

## The Sliding Scale of Shock as it Effects Setting Aside Execution Sales to Petitioner.

Your petitioner has had experience in four cases involving tax sales in the city of St. Louis. In the *Miller* and *Lindsay* cases, where the property was of value, the sales were set aside, in the case of *The City of St. Louis* v. *Gottschall,* 121 S. W. (2nd) 239, where the property was of no value being a vacant lot in a field of weeds for which $135.00 was paid, and upon which the City was demanding some $700.00 back assessments under threat of foreclosure, though the purchaser asked that it be set aside, she was required to keep it. Later she tested the validity of one of these back assessments in *City of St. Louis* v. *Wall,* 124 S. W. (2nd) 616, and was upheld by the St. Louis Court of Appeals. The City sold the property for a benefit assessment and then resold it for an assessment due previously, so that no title would have remained in petitioner. This the Court of Appeals did not permit, and the second sale was set aside on motion. But the expense of litigation therewith was great.

It is believed that your petitioner has shown both from the evidence as found in the Opinion, and the law of the State of Missouri that THERE WERE NO NON-FEDERAL GROUNDS FOR SETTING ASIDE THE SHERIFF'S DEED OF YOUR PETITIONER.

## There Were No Adequate Federal Grounds.

In order that the law and the facts relating to the constitutionality of the notices given in the condemnation suit and the execution sale enforcing it may be fully before this Court, the brief and argument of The City of St. Louis were certified to this Court and are attached hereto as Appendix 1. The entire evidence of the City of St. Louis has been certified to this Court and is found in the transcript of the record, pages 22 to 45.

## *Conclusion.*

We respectfully submit that this case is one calling for the exercise by this court of its supervisory powers in order that the errors of the Supreme Court of Missouri herein pointed out may be cured and that your petitioners' fundamental constitutional right, safeguarded by the Fourteenth Amendment, to a right to a decision on the constitutional question raised, and to equal protection of the law, may be protected and enforced.

Respectfully submitted,

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